



## **BRIEF IN SUPPORT OF FOREGOING PETITION.**

The opinion of the trial court is printed at Rec. 525, and final decree at page 7, the order of affirmance of the Appellate Division of the Supreme Court of the State of New York—First Department at Rec. 549, and order of affirmance of the Court of Appeals of the State of New York at Rec.

### **Grounds of Jurisdiction.**

The decree to be reviewed was rendered March 24, 1939, Rec. page 7, and the order denying re-argument in the Court of Appeals of the State of New York was rendered October 15th, 1942, and entered with the Clerk of the Supreme Court of the State of New York, New York County, October 26th, 1942.

## **A R G U M E N T.**

### **POINT I**

#### **The award of One Dollar is unconstitutional.**

The award by the court of one dollar each for damage parcels of petitioners-claimants is contrary to the provisions of the Federal and State Constitutions requiring due process of law, and just and adequate compensation for taking private property.

### **POINT II**

#### **The theory of broad easements of riparian owner over the foreshore is erroneous theory of value and contrary to law.**

To uphold the decision of the trial judge in this case requiring lands under water be filled in solidly to have substantial market value, means that the United States Supreme Court will establish a new theory for the valuation of lands under water, contrary to the present theory of substantial value for lands under water not filled in.

### POINT III

**Claimants' property was not fenced in by the City or its tenant the State, so adverse possession could not be obtained for statutory period of fifteen years, and it was not built upon. The decision of adverse possession is contrary to law.**

The *Matter of the City of New York, Willard Parker Hospital* case, 217 N. Y. 1, held that adverse possession was obtained against the City of New York by reason of the upland owner filling in the lands under water belonging to the City, and fencing them in for the prescribed period. In the *Wards Island* case there was no fencing of claimants' lots, or the erection of buildings upon them, except a small encroachment of a storage warehouse adjoining. The situation in *New York City v. Wilson*, 278 N. Y. 86, the land filled in was built upon and substantial buildings, slaughter houses, etc., erected thereon. This case is relied upon by the Trial Court (Rec. fol. 1610), but the facts differ substantially from the *Wards Island* case, and the *Wilson* case does not sustain the theory of adverse possession as applied to the *Wards Island* situation where no buildings were erected above ground, and no fencing in was done.

### POINT IV

**The decision of the trial court holding the upland owners have broad easements of access and egress over the adjacent foreshore and underwater lands, is injurious to the national interests.**

We urge that Mr. Justice McLAUGHLIN's theory of a broad riparian easement in favor of the upland owners over the adjoining foreshore and lands under water adjacent thereto is contrary to the previous decisions of this Court and of the courts of other states, and will prove,

if sustained by this Court, harmful to the policy of the United States Government in developing our interstate and foreign commerce by the improvement of our harbors and rivers on tidal waters for the owners of the foreshore and lands under water therein will be discouraged from expending capital to develop and improve these lands by the erection of wharves and warehouses throughout the nation. Therefore storage rates and wharfage rates will be increased, or not reduced, and the public will pay higher prices for commodities for port charges will be increased and added to the cost of transportation of the goods, all paid for by the ultimate consumers. The War Department prohibits filling in, but consents to building on piling on underwater lands.

**The petition should be granted.**

Respectfully submitted,

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